

# Family Medical Leave Act (FMLA)

Personal Planning  
for the Future

It can be overwhelming when you first find out that either you or a family member has a serious illness. The Family Medical Leave Act (FMLA) is a federal law that protects you from losing your job while you are on unpaid leave for certain medical reasons. FMLA lets an employee take 12 weeks of unpaid leave if he/she or an immediate family member:

- Is unable to work because of a serious health condition.
- Needs to care for an immediate family member (spouse, child or parent) who has a serious health condition.
- Has given birth or needs to care for a newborn child.
- Has had a child placed with you either through adoption or foster care.

FMLA guarantees 12 weeks of unpaid leave per year and can be used every year that it is needed. The 12 weeks that you can take under FMLA do not have to be taken all at once. The 12 week period can be used a week at a time, or be taken a few days at a time. You do not have to use all 12 weeks if you do not need them.

The 12 weeks allowed under FMLA means 12 work weeks. A work week is YOUR normal work week; whatever hours you normally work. For example, if you work three days a week for eight hours a day (24 hours per week) then one work week under FMLA covers 24 hours of unpaid leave.

The 12 month period in which FMLA leave must be used can fall in several different ways. It is up to your employer to define the 12 month period in which FMLA leave can be used. Whatever option is used, it must be used with all employees.



## How is a serious health condition defined?

FMLA defines a chronic or serious health condition as an illness, injury or physical/mental impairment that requires the employee to receive inpatient care. Inpatient care is at least one overnight stay in a hospital or residential medical care facility. Inpatient care also includes a period of incapacity (inability to work, go to school, or do regular daily living activities, like taking a shower or reading your mail). A chronic or serious health condition also requires:

- 'Periodic visits' for treatment by a healthcare provider. Periodic visits are on-going and happen over a long period of time, also known as recurring episodes. They can also be 'episodic' (happens once in a while). Asthma, diabetes, and epilepsy are examples of health conditions that require episodic visits. Routine medical appointments, eye exams, and dentist appointments do not qualify under FMLA.

Continuing treatment by a healthcare provider. Treatment must include:

- A period of incapacity (inability to work, go to school, or perform regular daily living activities).
- Treatment you receive two or more times from a healthcare provider.



- Treatment on one occasion that turns into continuous treatment. For example, your doctor's appointment that results in physical therapy appointments a few times per week.
- Incapacity (too sick to continue your daily routine) because of pregnancy or pre-natal care.
- Incapacity due to a chronic serious health condition.

If you need more time off than the 12 weeks of leave covered under FMLA, you may want to think about applying for disability benefits offered by your employer. These benefits protect you from losing your job if you need to take extra time off because of a serious health condition. Keep in mind that employers do not have to offer disability benefits. If they do, they choose how much in benefits to offer their employees. That is why disability benefits offered by employers vary widely.

If your employer does not offer long term disability benefits, or if you need to take off for more than one year, you may want to think about applying for Social Security Disability Insurance (SSDI). SSDI provides income for people with disabilities who are working age (18-64) but are unable to work because of their disability. For more information on SSDI, read *Programs Available for Seniors with Acquired Disabilities* fact sheet found in *Caring for the Caregiver: Tools for Caregivers in Rural Areas*, or call **800-841-8456** for a copy.

FMLA also protects:

- Your health benefits plan. An employer must keep an employee who is on FMLA leave on the company's 'group health plan' with the same coverage.



- Your job benefits. An employee must continue in their original or equivalent job when he/she returns from FMLA leave. The employee must receive the same pay, benefits and employment terms that he/she received before taking FMLA leave.
- Your job. FMLA leave cannot be counted as an absence under an employer's disciplinary attendance policy. In other words, if you take FMLA leave for a birth, a serious health condition, or to care for a sick parent, you cannot be fired under your employer's disciplinary attendance policy. Your absence is protected under FMLA.
- Against job loss. You cannot be fired for taking FMLA leave if your employer approves it. If this happens, you can file a lawsuit against your employer.

To be eligible for FMLA leave, you must work for a covered employer for at least one year and 1250 hours (40 hours a week for 31 weeks, 20 hours a week for 62 weeks) during the year (12 month period). A covered employer has to have at least fifty employees, including part time employees. However, an employer who has at least fifty employees does not have to follow FMLA policy. This is only if the company has multiple worksite locations that are farther than 75 miles apart, and has less than fifty employees at each site. The reason for this is that an employee should not have to travel more than 75 miles to fill in for a coworker taking FMLA leave.

You do not have to be a salaried employee or have full benefits, like a pension or paid vacation, to be eligible for FMLA. When asking for leave for the first time, you do not have to say that you wish to take leave under FMLA. You only have to give your employer enough information so it can be decided if you are eligible for FMLA leave or not. Within five days of leave, your employer must tell you if you are eligible for FMLA leave, or if paid leave will be used instead. If paid leave is used, it runs concurrently with FMLA leave. For example, if you get one week of paid sick leave

and 12 weeks of FMLA time, you will only be able to take a total of 12 weeks off. One week will be paid by your employer and the other 11 weeks will be unpaid. FMLA does not let you add your paid sick time to the 12 week maximum of unpaid leave allowed under FMLA.

Remember, the purpose of FMLA is to protect you from losing your job while you take care of your health, or an immediate family member who has serious health problems.



If your employer does not require you to use paid leave for FMLA leave, and you decide not to use your paid leave for FMLA leave, then you will be able to keep any accrued (built up) paid leave once you return from FMLA leave. If you know that you will be having a need to take leave, such as for an adoption, maternity, or a planned medical procedure, you must give your employer at least thirty days notice, or tell your employer 'as soon as practicable' to be considered for FMLA leave.

Your employer may require you to provide documentation from your healthcare provider explaining why your FMLA request is necessary. Documentation should include:

- The part(s) of the FMLA definition of 'serious health condition' that applies to you.
- The date the condition began.
- How long the condition will probably last.
- Any other facts about the condition that may be important for your employer to know.

If your employer questions the documentation, you may have to get a second or third opinion from healthcare providers who are not in your insurance network. FMLA requires your employer to cover the costs of these extra doctors visits. If you feel that you have been wrongly denied FMLA leave, you can appeal to your company's human resources department or your supervisor by writing a letter. This letter should explain why your condition is covered by FMLA leave. You may also claim interference (not being allowed to

take the leave you deserve) if you apply for FMLA leave, appeal and are wrongly denied. If you feel this has happened, you should contact your company's human resources department. If your company does not have one, contact a higher supervisor. If you are still denied, you can call the Wage and Hour Division of the United States Department of Labor at **866-487-9243**.

## Resources

The Family Medical Leave Act provides job protection for people missing work for long periods of time. Not all employers are legally obligated to follow this law. Additional information can be found at the U.S. Department of Labor's FMLA website, [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla).

If you need more time off than the 12 weeks of leave covered under FMLA, you may be eligible for Social Security Disability Insurance (SSDI). SSDI is a benefit for people who are working age (18-64) and are not able to work due to their disability. For more information and to find an office closest to you, call the Social Security Administration at **800-772-1213** or visit <http://socialsecurityofficelocations.org/West-Virginia>.



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